

MV 99-3

Tax Type: Motor Vehicle Use Tax

Issue: Private Vehicle Use Tax – Business Reorg/Family Sale

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS**

**THE DEPARTMENT OF REVENUE
OF THE STATE OF ILLINOIS**

v.

"William Sikes",

Taxpayer

**No. 98-ST-0000
Motor Vehicle Use Tax
NTL #53-000000 K**

**Mimi Brin
Administrative Law Judge**

RECOMMENDATION FOR DISPOSITION

Appearances: John Alshuler, Special Assistant Attorney General, for the Illinois Department of Revenue; "William Sikes" appeared pro se.

Synopsis:

This matter comes on for hearing pursuant to taxpayer, "William Sikes" (hereinafter "Sikes" or the "Taxpayer") protest to Notice of Tax Liability ("NTL") No. 53-000000 K issued by the Illinois Department of Revenue ("Department") for Vehicle Use Tax on a 199x GMC ("Rodeo" automobile (hereinafter "Rodeo") for which "Sikes" sought title in May, 1998.

On January 29, 1999, I entered an order setting this matter for hearing on February 19, 1999 at 10:00a.m. since neither the Department nor the taxpayer appeared on the day and at the time set by prior notice for an automatic status conference. On

January 29, the Department appeared through counsel. However, no one appeared for the taxpayer. The Department proceeded with the hearing and, as a result of the evidence the Department requested be admitted into the record, I find in favor of the taxpayer in this cause. In support thereof, the following findings of fact and conclusions of law are made:

Findings of Fact:

1. The Department's *prima facie* case, inclusive of all jurisdictional elements, was established by the admission into evidence of the Notice of Tax Liability for Vehicle Use Tax No. 53-000000 K, which showed a tax owing of \$100.00 with interest calculated through October 19, 1998. Department Ex. No. 2
2. On May 1, 1998, "Sikes" filed with the Department a Vehicle Use Tax return pertaining to a 199x "Rodeo" indicating that it was transferred to him by "Nancy Sikes" of "Someplace", Illinois. At that time, "Sikes" paid to the Department \$15.00. Id.
3. "Sikes" insured the "Rodeo" effective April 25, 1998, and applied for new license plates as of that date. Id.
4. He received the "Rodeo" as part of a property settlement in a divorce action against "Nancy Sikes". Id.
5. The divorce had not been finalized on April 25, 1998, when "Nancy" advised that she was transferring the "Rodeo" due to "an impending divorce settlement..." Id.

6. An order entered January 29, 1999, set this matter for hearing on February 19, 1999 at 10:00a.m., and was served on "Sikes" by United States Postal Service certified mail. Department Ex. No. 1

Conclusions of Law:

The Vehicle Use Tax (625 **ILCS** 5/3-1001 *et seq.*) ("VUT") imposes a tax "on the privilege of using, in this State, any motor vehicle as defined in Section 1-146 of this Code acquired by gift, transfer, or purchase... ." *Id.* at 5/3-1001 The statute specifies that a tax of \$15.00 is due when the transferee is the spouse of the transferor. *Id.* If the transfer does not fall into such a category, then the applicable tax for a vehicle that is five years old is \$115.00. *Id.* As "Sikes" remitted \$15.00 to the Department with the return, the Department's NTL assessed the remainder of this tax amount.

The VUT fully incorporates the Use Tax Act (35 **ILCS** 105/101 *et seq.*) (35 **ILCS** 5/3-1003) which, in turn, incorporates provisions of the Retailers' Occupation Tax Act (35 **ILCS** 120/101 *et seq.*) 35 **ILCS** 105/12 Thus, the NTL issued by the Department is deemed to be *prima facie* evidence of the amount of the tax shown to be due thereon. 35 **ILCS** 120/4 In order to overcome the presumption of validity attached to the NTL, the taxpayer must produce "competent evidence" identified with its books and records, showing that the Department's determination is incorrect. Copilevitz v. Department of Revenue, 41 Ill.2d 154 (1968)

Because the taxpayer failed to appear at the hearing, had the Department submitted the NTL under the Certification of Records signed by the Director of the Department, I would have found the taxpayer in default and ordered that the NTL be

finalized as issued. However, at hearing, the Department asked to have admitted into evidence documents it had which indicate that "William Sikes" was still married to "Nancy Sikes" at the time of the transfer. In particular, "Sikes"'s protest avers that the divorce was not finalized until May 14, 1998. "Nancy Sikes"'s statement also speaks to transferring the "Rodeo" as part of a pending divorce settlement. The Department, in effect, adopted as correct, these documents and statements, which, in turn, defeat the NTL.

WHEREFORE, for the reasons stated above, it is my recommendation that the Notice of Tax Liability No. 53-000000 K be cancelled.

3/1/99

Mimi Brin
Administrative Law Judge